

§ 107.1520

13 CFR Ch. I (1–1–00 Edition)

EP = Earmarked Profit (Loss)

NI = Net Income (Loss), as reported on SBA Form 468 except as otherwise provided in this paragraph (d)(1)

IK = Unrealized Appreciation (Depreciation) on Earmarked Assets that you are distributing as an In-Kind Distribution under § 107.1580

EME = Excess Management Expenses

(ii) For the purpose of determining Net Income (Loss), leverage fees paid to SBA and partnership syndication costs that you incur must be capitalized and amortized on a straight-line basis over not less than five years.

(2) “Excess Management Expenses” are those that exceed the following limit:

(i) For a full fiscal year, the limit is the lower of:

(A) 2.5 percent of your weighted average Combined Capital for the year, plus \$125,000 if Combined Capital is below \$20,000,000; or

(B) Your Management Expenses approved by SBA.

(ii) For less than a full fiscal year, you must prorate the annual amounts in paragraph (d)(2)(i) of this section to determine the limit.

(e) *How to compute your Earmarked Profit (Loss) if Earmarked Asset Ratio is less than 100 percent.* If your Earmarked Asset Ratio is less than 100 percent, compute your Earmarked Profit (Loss) as follows:

(1) Do the Earmarked Profit (Loss) computation in paragraph (d) of this section.

(2) Subtract your net realized gain (loss) (as reported on SBA Form 468) on Loans and Investments that are not Earmarked Assets.

(3) Separate the result from paragraph (e)(2) of this section into:

(i) Net realized gain (loss) (as reported on SBA Form 468) on Earmarked Assets (“EGL”); and

(ii) The remainder (“R”).

(4) Your Earmarked Profit (Loss) equals:

$EGL + (R \times \text{Earmarked Asset Ratio})$

(f) *How to compute your cumulative Earmarked Profit (Loss).* Sum your Earmarked Profit (Loss) for all fiscal years and for any interim period following the end of your last fiscal year. The total is your cumulative Ear-

marked Profit (Loss), which you must use in the Prioritized Payment computations under § 107.1520.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5870, Feb. 5, 1998]

§ 107.1520 How a Licensee computes and allocates Prioritized Payments to SBA.

This section tells you how to compute Prioritized Payments, Adjustments and Charges on Participating Securities and determine the amounts you must pay. To distribute these amounts, see § 107.1540.

(a) *How to compute Prioritized Payments and Adjustments—*(1) *Prioritized Payments.* For a full fiscal year, the Prioritized Payment on an outstanding Participating Security equals the Redemption Price times the related Trust Certificate Rate. For an interim period, you must prorate the annual Prioritized Payment. If your Participating Security was sold to a short-term investor in accordance with § 107.1240, the Prioritized Payment for the short-term period equals the Redemption Price times the short-term rate.

(2) *Adjustments.* Compute Adjustments using paragraph (f) of this section.

(3) *Charges.* Compute Charges in accordance with § 107.1130(d)(2).

(b) *Licensee’s obligation to pay Prioritized Payments, Adjustments and Charges.* You are obligated to pay Prioritized Payments, Adjustments and Charges only if you have profit as determined in paragraph (d) of this section.

(1) Prioritized Payments that you must pay (or have already paid) because you have sufficient profit are “Earned Prioritized Payments”.

(2) Prioritized Payments that have not become payable because you lack sufficient profit are “Accumulated Prioritized Payments”. Treat all Prioritized Payments as “Accumulated” until they become “Earned” under this section.

(3) Adjustments (computed under paragraph (f) of this section) and Charges (computed under § 107.1130(d)(2)) are “earned” according to the same criteria applied to Prioritized Payments.

(c) *How to keep track of Prioritized Payments.* You must establish three accounts to record your Accumulated and Earned Prioritized Payments:

(1) *Accumulation Account.* The Accumulation Account is a memorandum account. Its balance represents your Accumulated Prioritized Payments, unearned Adjustments and unearned Charges.

(2) *Distribution Account.* The Distribution Account is a liability account. Its balance represents your unpaid Earned Prioritized Payments, earned Adjustments and earned Charges.

(3) *Earned Payments Account.* The Earned Payments Account is a memorandum account. Each time you add to the Distribution Account balance, add the same amount to the Earned Payments Account. Its balance represents your total (paid and unpaid) Earned Prioritized Payments, earned Adjustments and earned Charges.

(d) *How to determine your profit for Prioritized Payment purposes.* As of the end of each fiscal year and any interim period for which you want to make a Distribution:

(1) Bring the Accumulation Account up to date by adding to it all Prioritized Payments and Charges through the end of the appropriate fiscal period.

(2) Determine whether you have profit for the purposes of this section by doing the following computation:

(i) Cumulative Earmarked Profit (Loss) under § 107.1510(f); minus

(ii) The Earned Payments Account balance; minus

(iii) All Distributions previously made under §§ 107.1550, 107.1560 and 107.1570(a); minus

(iv) Any Profit Participation previously allocated to SBA under § 107.1530, but not yet distributed.

(3) The amount computed in paragraph (d)(2) of this section, if greater than zero, is your profit. If the amount is zero or less, you have no profit.

(4) If you have a profit, continue with paragraph (e) of this section. Otherwise, continue with paragraph (f) of this section.

(e) *Allocating Prioritized Payments to the Distribution Account.* (1) If you have a profit under paragraph (d) of this section, determine the lesser of:

(i) Your profit; or

(ii) The balance in your Accumulation Account.

(2) Subtract the result in paragraph (e)(1) of this section from the Accumulation Account and add it to the Distribution Account and the Earned Payments Account.

(f) *How to compute Adjustments.* You must compute Adjustments as of the end of each fiscal year if you have a balance greater than zero in either your Accumulation Account or your Distribution Account, after giving effect to any Distribution that will be made no later than the second Payment Date following the fiscal year end.

(1) Determine the combined average Accumulation Account and Distribution Account balances for the fiscal year, assuming that Prioritized Payments accumulate on a daily basis without compounding.

(2) Multiply the average balance computed in paragraph (f)(1) of this section by the average of the Trust Certificate Rates for all the Participating Securities poolings during the fiscal year.

(3) Add the amounts computed in this paragraph (f) to your Accumulation Account.

(g) *Licensee's obligation to pay Prioritized Payments after redeeming Participating Securities.* This paragraph (g) applies if you have redeemed all your Participating Securities, but you still hold Earmarked Assets and still have a balance in your Accumulation Account.

(1) You must continue to perform all the procedures in this section as of the end of each fiscal quarter and prior to making any Distribution. You must distribute any Earned Prioritized Payments, earned Adjustments and earned Charges in accordance with § 107.1540.

(2) After you dispose of all your Earmarked Assets and make any required Distributions in accordance with § 107.1540, your obligation to pay any remaining Accumulated Prioritized Payments, unearned Adjustments and unearned Charges will be extinguished.

[63 FR 5870, Feb. 5, 1998]